Supreme Court, U.S.
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No. .

In The

# SUPREME COURT OF THE UNITED STATES

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MARINA DE LARRACOECHEA AZUMENDI as Representative and Ancillary Co-Executrix of the ESTATE OF MARIA NIEVES DE LARRACOECHEA AZUMENDI, deceased, on behalf of said Estate and the lawful survivors of the deceased, MARINA AZUMENDI VALLE, MARIA TERESA AZUMENDI VALLE, ANNE DE LARRACOECHEA GONZALEZ, MARIA JOSE GONZALEZ. IRIBARREN and MARIA ENEDINA FLORES GARCIA,

Petitioner,

vs.

HANS FRANK ROSENKRANZ on his own behalf and as Ancillary Co-Executor of the ESTATE OF MARIA NIEVES DE LARRACOECHEA AZUMENDI,

Respondent,

*On Petition for Writ of Certiorari*
*To The Court of Appeals, State of New York*

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# PETITION FOR WRIT OF CERTIORARI

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MARINA DE LARRACOECHEA AZUMENDI
Petitioner Pro-Se

307 East 44th Street; 1120
New York, New York 10017
(212) 697-0189

65RP

## QUESTIONS PRESENTED

1. Whether a compromise and settlement imposed by the SURROGATE'S COURT, NEW YORK COUNTY, for the wrongful death and other causes of, action, on behalf of a domiciliary, resident and national of Spain, in an action litigated in the State of Florida is valid when

A. The SURROGATE'S COURT OF NEW YORK COUNTY acted, in want of jurisdiction, or fraudulently acquired by 'brutum fulmen'.

B. Said fraudulent jurisdiction was exercised in conspiracy of court and counsel to discriminate against the Spanish Estate and the lawful beneficiaries, and deny, deprive and defraud of rights, due process and property constitutionally protected.

2. Whether the COURT OF APPEALS and the APPELLATE DIVISION, FIRST DEPARTMENT, furthered said conspiracy by ignoring the overwhelming facts and documentation and flagrant violations in a denial of substantial justice that shocks the conscience.

### Brief Introductory Statement

The instant petition originates, in the preventable destruction of PAN AM flight 103 over Lockerbie, Scotland, on December 21, 1988, by a terrorist bomb. The Decedent MARIA NIEVES DE LARRACOECHEA AZUMENDI, a Pan Am flight attendant on duty, was a resident, domiciliary and national of Spain at the time of her death. In the course of 1989, PETITIONER and RESPONDENT flew to New York to commence a civil lawsuit. Adviced by counsel ancillary letters testamentary were petitioned at the Surrogate's Court of New York County. A wrongful death, and other causes of, action was commenced in Dade County, Florida.

## PARTIES TO THE PROCEEDING BELOW

**MARIA NIEVES DE LARRACOECHEA AZUMENDI** ("THE DECEDENT", "THE ESTATE") was a resident, domiciliary and national of Spain at the time of her death leaving a Will executed in Bilbao, Spain, dated. May 16th, 1984, probated and not contested in Bilbao, Spain, on June 12, 1989. The Estate is governed by Spanish Law. The Decedent was a seventeen, year senior flight attendant with Pan Am.

**MARINA DE LARRACOECHEA AZUMENDI** ("THE PETITIONER") is sister of the decedent. Basque, of Spanish nationality with English as second language and residences in New York, New York, and Bilbao Spain. Plaintiff and Personal Representative in the Florida wrongful death action. Ancillary Co-Executrix and, Beneficiary-Distributee, representing by general powers of attorney approximately 50% interests of the lawful survivors:

**MARINA AZUMENDI VALLE,** mother of the Decedent, and Beneficiary-Distributee of 1/3 (33-33%) of the Estate, by the testatrix' dispositions, and pursuant to Art. 809 of the Spanish Civil Code. Also universal heiress of her sistert's Estate Maria Teresa Azumendi Valle.

**MARIA TERESA AZUMENDI VALLE,** aunt and god-mother of the Decedent and Beneficiary-Distributee of 10% of the Estate and a partial dependant of $100 - $150 per month. Deceased January 1997.

**ANNE DE LARRACOECHEA GONZALEZ**, niece and god-child; **MARIA JOSE GONZALEZ IRIBARREN**, sister-in-law; **MARIA ENEDINA FLORES GARCIA** life long friend of the Decedent. All of the above beneficiaries-distributees totaling approximately 50% of the Estate and residents, domiciliaries and nationals of Spain.

**HANS FRANK ROSENKRANZ** ("THE RESPONDENT", "ROSENKRANZ") is husband of the Decedent, Respondent, Ancillary Co-Executor, Personal Representative and Plaintiff in the Florida action. Beneficiary-Distributee of approximately 50% of the Estate.

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## PETITION FOR WRIT OF CERTIORARI

MARINA DE LARRACOECHEA AZUMENDI as Ancillary Co-Executrix and Personal Representative of the lawful survivors of the ESTATE OF MARIA NIEVES DE LARRACOECHEA AZUMENDI, deceased, respectfully petitions for certiorari review of: (i) the order of the COURT OF APPEALS OF THE STATE OF NEW YORK, dated and entered the 26th of October, 1999; and (ii) the order of same court, dated and entered July 06, 1999, and the papers and fully reproduced record upon which they are based.

PETITIONER requests a certiorari review on the full, albeit incomplete record on appeal for the ancillary, and subsequent, proceedings at the SURROGATE'S COURT, NEW YORK COUNTY, commenced on December 14, 1989; and the wrongful death action filed in Dade County, Florida, December 20, 1989.

PETITIONER, respectfully, directs the Court to her Petition for Writ of Certiorari, #98-1441, docketed January 15, 1999, and denied by order of March 8, 1999, and requests the leniency of the Court as to the instant submission: "Pro-Se complaints, are held to less stringent standards than formal pleadings by lawyers", *Haines v. Kerner*, 92 S-Ct 594 (1972).

### Objection To Attorney JOHN B. CARTAFALSA Appearing for Respondent ROSENKRANZ.

Petitioner most forcefully objects to the appearance and legal representation of Respondent ROSENKRANZ by attorney JOHN B. CARTAFALSA ("CARTAFALSA").

Following the disqualification of attorney for the ancillary co-executors, LIONEL ALAN MARKS ("MARKS"), Appendix L, A-28, by decision-order (RENEE R. ROTH, S.) of March 27, 1998, Appendix E, A 9-10, on the grounds of conflict of interest. Attorney CARTAFALSA appeared on March 30, 1998, as substituting attorney.

Dated 4/10/1998, records provided by the STATE OF NEW YORK, UNIFIED COURT SYSTEM, OFFICE OF THE COURT ADMINISTRATION inform:

| | |
|---|---|
| HON. JOHN B. CARTAFALSA | LIONEL ALAN MARKS |
| 71 BROADWAY | 71 BROADWAY |
| SUITE 1705 | SUITE 1705 |
| NEW YORK, NY 10006 | NEW YORK, NY 10006 |
| (212) 809-5511 | (212) 943-3400 |

CARTAFALSA'S appearance fails to avoid even the appearance of professional impropriety required by CANON 9 and DR 9-101 [1200-45] of the Lawyer's Code of Professional Responsibility, New York State Bar Association; and, in fact, maintaining and furthering the conflict of interest but with a different physical front and name, in violation of DR 5-108 [1200.27] and Rules 1.7, 1.8, 1.9 of the D.C. Rules of Professional Conduct. Indeed. these attorneys have violated just about every rule of professional conduct, including the disappearance of the unclaimed money awards for the unfair and unlawful compromise and settlement, in an interest bearing escrow account under the responsibility and supervision of MARKS., Appendix D and E.

ROSENKRANZ, MARKS and CARTAFALSA are defendants in claims for denial of civil rights, conspiracy to deny and deprive of said rights and property, breach of contract, legal malpractice and fiduciary duties.

## OPINIONS BELOW

The COURT OF APPEALS, by order dated. and entered October 26, 1999, Appendix A, A-1, denied PETITIONER'S motion for leave to appeal to the Court of Appeals, pursuant to CPLR § 5514:1. Mistaking Method.

PETITIONER previously appealed to the COURT OF APPEAL as of right and on constitutional grounds. Respondent ROSENKRANZ moved to dismiss the appeal. The Court granted respondent's motion to dismiss the appeal "upon the

ground that no substantial constitutional question is directly related", Appendix B, A-2.

Both moves to appeal the Decision-Order of the Appellate Division, First Department, dated and entered March 11, 1999, Appendix C, A-3, affirming the Surrogate's Court Decree (RENEE R. ROTH, S.) of March 17, 1998, Appendix D, A-5; and orders same court and surrogate, entered January 7, 1998, Appendix F, A 12-13; August 21, 1997, Appendix G, A 14-15; June 16, 1997; Appendix H, A 16-17; and March 27, 1998, Appendix E, A 8-11.

Omission is made of the Order of November 7, 1996, Appendix J, A 21-25, unfairly and unlawfully imposing the compromise and settlement in denial of the due process and equal protection of the law. Other overwhelming facts, factors, law and violations are unmentioned, misrepresented or ignored.

PETITIONER further appealed on the grounds that the decision and order of the appellate court finally determined the main issues:

> **the timely demanded trial by jury of the Florida wrongful death action in the forum originally chosen on behalf of the Spanish Estate and the lawful survivors of the decedent, a domiciliary, resident and national of Spain at the time of her death.**

## STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

As the order of the COURT OF APPEALS from which petitioner seeks review was dated and entered October 26, 1999, this petition is timely filed, mailed, this January 24, 2000.

By letter dated February 14, 2000, this Court granted PETITIONER 60 days to redo and receive submission..

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the United States Constitution, Section 1, provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities ties of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the the laws.

2. 42 U.S.C. § 1983, which provides:

> Every person who, under color of any statute ordinance, regulation, custom or usage of any state or territory of the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

3. 42 U.S.C. § 1985. Conspiracy to interfere with civil rights:

> (2) Obstructing justice; [...]; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;
>
> (3) Depriving persons of rights or privileges.

4. 42 U.S.C. §1986. Neglecting to prevent a conspiracy:

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same..."

5. 42 U.S.C. §1981 (a) Statement of equal rights provides:

"'All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property..."

(c) Protection against impairment

"The rights protected by this section are protected against impairment by non governmental discrimination and impairment under color of State law."

6. The New York State Constitution. Article I. Bill of Rights provides:

Section 2. "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever;"

Section 6. "No person shall be deprived of life, liberty or property without due process of law."

Section 16. "The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation".

7. Florida State Constitution. Art. I, § 2. Basic Rights provides:

> §2. "All natural persons are equal before the law and have inalienable rights, among which [...] to acquire possess and protect property".
>
> §9. Due Process. "No person shall be deprived of property without due process of law".
>
> §21. Access to courts. "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or deter".
>
> §22. Trial by jury. "The right of trial by jury shall be secure to all... inviolate."

8. The Universal Declaration of Human Rights provides:

> Article 10. "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him"

9. SCPA § 103, 44. Property.

> "Anything that may be the subject of ownership and is real or personal property, or is a chose in action."

10. Florida Statutes. Chapter 768. Negligence. 768-19. Right of action provides:

> "When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person including those occurring in navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued) the person or watercraft that would have been liable in damages as

specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

11. Spanish Civil Code, Article 9. PERSONAL LAW. The Law of Succession/Inheritance Law arising from death. The basic principle, whether for natural or for legal persona:

"one's personal law is determined by one's citizenship".

Under the Spanish Civil Code and the Inheritance Law:

"any award proceeds to be paid to the Plaintiffs are treated and distributed as assets of the Estate if the action was brought by the Plaintiffs as Representatives of the decedent's Estate"

12. Chapter IV of the Spanish Civil Code, section of International Private Law, Art. 9.8:

"The Inheritance Law (The Law of Succession) will be governed by the national law of the deceased at the time of his/her death, whatever the nature of the property is and in whichever country the assets are found or the property is located"

13. Spanish Civil Code, Art. 809 provides:

"...the lawful portion corresponding to the parents of the decedent, when concurring with the spouse-widow, is of one-third of the inheritance".

14. 9 Carmody-Wait 2d. Section § 63:461. Effect of Lack of Jurisdiction:

"In order for a judgment to operate as a conclusive determination of a cause of action or of facts litigated therein, it is necessary that it should have been rendered

by a court of competent jurisdiction. A judgment by a court without jurisdiction of the parties or of the subject matter of the action is not binding upon the parties to the action and has no effect as 'res judicata'"

15. 9 Carmody-Wait 2d. Section § 63:462. Effect of Fraud or Collusion in Obtaining Judgment:

"In stating the doctrine of 'res judicata', the courts refer to the fact that the judgment sought to be used as a basis for the application of the doctrine was rendered without fraud or collusion, since a judgment obtained by fraud or collusion may not be used as the basis for the application of 'res judicata'".

## STATEMENT OF THE CASE
## PROCEDURAL HISTORY

On December 21, 1988, PAN AM flight 103, en route Frankfurt-London-New York, was destroyed by a terrorist bomb while over flying Lockerbie, Scotland. The Decedent was a stewardess on duty.

**A. The Spanish Domicile of the Decedent, Spanish law Governs the Estate.**

The DECEDENT was a resident, domiciliary and national of Spain at the time of her death. Her will executed in Bilbao, Spain, on May 16, 1984, was probated and not contested --nor the Spanish domicile-- in Bilbao, Spain, on June 12, 1989.

Other facts and documentation overwhelmingly in support:

(i) The Death Certificate.
(ii) The petition for ancillary letters testamentary:
"a will of real and personal property made by said deceased was duly established in accordance with the

laws of Spain where the decedent resided and was domiciled".

(iii) Plaintiffs' Motion in Limine for choice of law on compensatory damages, in the Florida action, served February 1, 1996, Index to Record on Appeal ("IRA"), Vol. IV, pp. 531-539:

"...it does not actually conflict with the law of Spain, the state in which plaintiffs' decedent was domiciled and where, she resided at the time of her death"

(iv) Defendants' PAN AM response to Plaintiffs in limine motion dated March 12, 1996, IRA Vol. IV, pp 616-620:

"...compensatory damages in this case, which is brought for the death of a Spanish domiciliary aboard Pan Am Flight 103", et seq.

(v) ROSENKRANZ'S application to compromise and settle the wrongful death action sworn April 24, 1996: "At the time of her death the decedent was a domiciliary of Spain", as well as the decedent's correspondence and the records of the SPANISH MINISTRY OF JUSTICE AND INTERIOR.,

(vi) The Census of Madrid, and the Decedents correspondence, in a non exhaustive enumeration.

**B. NICHOLAS GILMAN, JEFFREY M. LIGGIO, LIONEL A. MARKS attorneys for the Plaintiffs. Deprivation of adequacy of representation and effectiveness of counsel, 'ab initio', in civil conspiracy and collusion.**

On December 14, 1989, PETITIONER and ROSENKRANZ, jointly, retained NICHOLAS GILMAN ("GILMAN") and, then, GILMAN, OLSON & PANGIA, in Washington D.C. to commence a wrongful death action for damages. In prominent part, ¶2 of the retainer, it is stated "It is understood that you as our attorneys [...] will not settle any such action without our consent".

JEFFREY M. LIGGIO ("LIGGIO") of LIGGIO & LUCKMAN in West Palm Beach, Florida, was subcontracted

by GILMAN without knowledge, consent or approval by the plaintiffs, nor has he been retained or is authorized to represent, much less misrepresent fraudulently.

From the outset, unknown to PETITIONER for many years, Respondent ROSENKRANZ and attorneys MARKS, in New York, GILMAN, in Washington, D.C. and LIGGIO, in Florida, schemed and developed a fraud by which the Spanish. Law governing the ESTATE would be usurped by the SURROGATE'S COURT, NEW YORK COUNTY, and the rights and property of the Spanish ESTATE and the lawful survivors would be denied, in a conspiracy of courts and counsel, Appendix K and L, A 26-27.

The violations abuses and denials are multiple, repeated and continuous in this eleven year ordeal and travesty of justice among which some of the most flagrant: conspiracy of courts and counsel to deny, deprive and defraud of civil rights and property; denial of the due process and equal protection of the law; fraud and deceitful practices; breach of contract, trust and fiduciary duties; legal malpractice; judicial anarchy, tyranny and abuse; sham, frivolous and fraudulent pleadings; denial of timely knowledge and access to the records; tampering and alteration of the records and "added difficulties" intended to harass, undermine and frustrate Petitioner's efforts once forced to appear pro-se.

In these years, attorneys MARKS, GILMAN and LIGGIO have knowingly and maliciously performed against their clients the Spanish ESTATE and the lawful survivors.

On March 04, 1997, by ambush and surprise, GILMAN appeared as witness offering testimony and evidence against Petitioner, his client, at a hearing held at the Surrogate's Court, New York County, to establish the domicile of the Decedent and the distribution of the proceeds "irreparably tainting the proceedings" and "demolishing the integrity of the fact finding process itself that is protected by the ethical guidelines governing attorneys, which require independent and vigorous

representation of a client's interests". *Chang v. Chang,* 190 AD, 311, *Greene v. Greene,* 47 NY2d 447.

As well *Matter of Kadish,* 240 AD2d 87 in re: interstate attorney misconduct with similar rules.

When PETITIONER moved in the Florida Courts to remedy this egregious conflict of interests with supporting documentation all relief requested was denied and the situation permitted to continue.

MARKS was disqualified by decision/order (RENEE R. ROTH, S.) dated March 27, 1998, Appendix E, A-8, following PETITIONER'S motion once pro-se. New that not independent counsel would engage in protecting and preventing any action against the attorneys.

Further the SURROGATE'S COURT erroneously stated that PETITIONER had terminated MARKS. PETITIONER was, in fact, forced to seek new counsel following MARKS, GILMAN and LIGGIO'S betrayal in, and by, ROSENKRANZ'S application to compromise and settle on May 1996, I, infra.

**C. The Worker's Compensation Claim. W. C. B. OF NEW YORK STATE. March 1989.**

On or about March 1989, a claim on behalf of the ESTATE OF MARIA N. LARRACOECHEA was instituted at the WORKER'S COMPENSATION BOARD of the STATE OF NEW YORK, W.C.B. Case No. 08906838

In Memorandum of Decision dated February 21, 1995, Workers' Compensation Board, Judge WARREN FINKELSTEIN determined that "the State of New York had no jurisdiction", in the GARRET claim, another PAN AM 103 crew member with many similarities to the Decedent's claim.

By order dated June 28, 1995, Judge DAVID L. TOBIN determined that "the Workers' Compensation Law of England applies" in the wrongful death action on behalf of the Estate.

**D. The Ancillary Letters Testamentary, 12.14-15.89. SURROGATE'S COURT, NEW YORK COUNTY.**

On December 14, 1989, MARKS submitted a petition for ancillary letters testamentary to the SURROGATE'S COURT, NEW YORK COUNTY, on behalf of PEITIONER and ROSENKRANZ. It was granted by decree (RENEE R. ROTH, S.) dated December 15, 1989, Appendix L, A-27.

The SURROGATE'S COURT issued Ancillary Letters Testamentary dated December 26, 1989, Appendix K, A-26.

In what would become a pattern of vagueness and lack of specificity that later on would allow for "anything", the petition is not filed pursuant to any specific rule or statute of the SURROGATE'S COURT, on ancillary letters testamentary, as, indeed, it was intended to facilitate legal manouvering with neither real and vigorous defense of the ESTATE'S and the plaintiffs' interests nor opposition but for a long fiction of litigation and prolonged injury, prejudice and irreparable harm.

By said application, decree and letter, the SURROGATE'S COURT acquires jurisdiction fraudulently by 'brutum fulmen' since on December 14, 1989, there was no property, in the State of New York, nor was there any intended since a wrongful death action was to be commenced in Florida shortly.

**E. The Wrongful Death Action, 12.20.89. CIRCUIT COURT, DADE COUNTY, FLORIDA.**

On December 20,, 1989, a "Complaint for Damages" was filed by GILMAN and LIGGIO captioned: "HANS FRANK ROSENKRANZ and MARINA DE

LARRACOECHEA AZUMENDI, Personal Representatives of the Estate of MARIA NIEVES DE LARRACOECHEA AZUMENDI, deceased, on behalf of said Estate and the lawful survivors of the deceased, Plaintiffs, vs. PAN AMERICAN WORLD AIRWAYS, INC. a foreign corporation, PAN AMERICAN WORLD SERVICES, INC., and ALERT MANAGEMENT SYSTEMS, INC., Florida Corporations, Defendants", WITH DEMAND OF TRIAL BY JURY. In the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. Case No. 89-56581.

No Summons and Service of Process of the Complaint appear filed with the Court today. An "Amended Complaint for Damages" was filed. No mention is made of statute, rule, Wrongful Death Act or otherwise. No jurisdiction is asserted. No concern, issue or objection by Pan Am is raised or recorded in the Florida incomplete files.

The action is not governed by the Warsaw Convention, *In Re Pan American Corp.*, 950 F.2d 839 (2nd Cir. 1991).

The destruction of Pan Am flight 103 was determined preventable by the "President's Commission on Aviation Security and Terrorism" on May 15, 1990; and by determination of SHERIFF PRINCIPAL JOHN S. MOWAT, QC, in the "Fatal Accident Inquiry relating to the Lockerbie Air Disaster", dated March 18, 1991.

**F. Unanimous Liability of PAN AM. 07-10-92. Jury trial scheduled for 06.03-96.**

The liability of the airline was unanimously established on July 10, 1992, in the United States District Court, Eastern District of New York, M.D.L. 799 (TCP) (All Cases) (JMS) 7190, and affirmed in the United States Court of Appeals for the Second Circuit. Defendants' Petition for certiorari was denied. *In re Air Disaster at Lockerbie, Scotland on 12-21-88,* 37 F-3d 804 (2nd Cir-. 1994), *cert. denied,* 115 S.CT. 934 (1995).

On December 11 , 1995, a notice of jury trial scheduled a date for June 3, 1996, in Dade County.

**G. PAN AM'S Motion To Dismiss On The Ground Of 'Forum Non Conveniens'. 03-13-96.**

On March 13, 1996, PAM AM filed a motion for dismissal on the ground of 'forum non conveniens' based on *Kinney System, Inc. v. Continental Insurance Co.*, 674 So.2d 86, a recent decision by the Supreme Court of Florida.

A special one hour hearing was set for May 20, 1996. By letter of same date MICHAEL PANGIA ("PANGIA") informed the Plaintiffs "Jeff Liggio appeared in Miami for the hearing. The result fortunately is that the judge will await the outcome of the petition in the New York Surrogate's Court and postponed the 'forum non conveniens' motion until that time".

**H. The Mediation Conference. 03.14.96. Miami, Florida**

Advised by GILMAN and LIGGIO as to the requirement to enter settlement negotiations prior to trial -when in fact without consultation with, or knowledge and consent of, Petitioner a motion for mediation had been filed on behalf of the plaintiffs- a first demand of $5,900,000-00 was submitted to DOMINICK ALFIERI of UASAIG, on September 26t 1995. A counter offer of $1,504,240.00 was made on or about November 1995.

On March 14, 1996, PETITIONER and ROSENKRANZ flew from Spain and Germany, respectively, to attend a travesty of a mediation conference scheduled in Miami, Florida.

Initially to be held by ARDEN M. SIEGENDORF, the last minute replacement, mediator PHILLIP J. MANDINA, should have been vehemently rejected by GILMAN and LIGGIO, had they not been in conspiracy and collusion, and intent to settle by any and all surreptitious methods.

MANDINA'S clients include: UNDERWRITERS GUARANTEE INSURANCE COMPANY; SPECIALTY CLAIM INSURANCE ADJUSTERS; UNDERWRITERS FINANCIAL OF FLORIDA.

At the outset, MANDINA violated the essence and main principle of mediation, impartiality, Rule 44.1011 of the Florida Statutes, and Fla.R.Civ.P. § 1.700. After a five hour pressure cooker to settle, with a counter offer of $1,504,240.009 an impasse was reported.

GILMAN informed the Plaintiffs he was to undergo brain surgery shortly after and be replaced by his partner PANGIA, never involved in the case in the previous seven years, to PETITIONER'S knowledge.

On March 21, 1996, PAN AM made an offer of judgment for $1,500,000.00 rejected by PETITIONER on March 28, 1996.

On April 8, 1996, without PETITIONER'S knowledge and consent, LIGGIO filed a "Petition for Appointment of Administrator ad Litem" on behalf of ROSENKRANZ.

**I. ROSENKRANZ'S Application To Compromise And Settle The Wrongful Death Action. 05.15-96. SURROGATE'S COURT, NEW YORK COUNTY.**

On May 23, 1996, PETITIONER, unaware, was served in Bilbao, Spain, with a citation and petition captioned "Application to Compromise and Settle the Cause of Action for the Wrongful Death and Conscious Pain and Suffering and for Judicial Settlement of the Account with Respect to the Proceeds", filed at the SURROGATE'S COURT, NEW YORK COUNTY.

The petition and citation to show cause, return day June 21, 1996, abound in legal trickery and procedural non-compliance: (i) the citation is neither signed nor sealed by the

Court, as required by SCPA § 306.4 abstention of which unleashes unlimited uncertainty and indefinition as to legal and judicial actions, abuse and indeed anarchy; (ii) GILMAN'S undeserving fees and disbursements of $364,065.71, from December 20, 1989 to May 8, 1996, are billed under "PANGIA & GILMAN", for the legal nightmare and prolonged injury inflicted; (iii) by specific clause GILMAN cannot settle without the clients' consent; (iv) various affidavits are invalidated.

The application is a tailored to convenience, misrepresentation of the facts, findings and discovery in the eight years the Estate and the lawful survivors have so hard worked, and long waited, for justice and "the day in Court". Essential facts and findings are intentionally misrepresented, silenced or perjured.

Within twenty four hours, at great detriment to the personal, intellectual, professional and financial aspects of her life, PETITIONER left for New York to, diligently, seek new that not independent counsel, first, GARY B. FREIDMAN, HARVEY E. CORN and GREENFIELD STEIN & SENIOR, LLP; and, subsequently, BRUCE FEFFER, DANIEL ROSKOFF, FEFFER & ROSKOFF, RICHARD J. MONTELIONE, MONTELIONE & ASSOCIATES and HERBERT MONTE LEVY, all promptly joining in the conspiracy of courts and counsel.

On December 20, 1996, PETITIONER, putting to halt the rest of her life and interests appeared pro-se as a last resort.

**Breach Of Fiduciary Duties.**

ROSENKRANZ --with the help of MARKS, GILMAN, and LIGGIO, and their sworn affidavits-- breached his fiduciary duties of honesty and fairness pursuant to SCPA § 711.2, 6, and 7, and, greedily, petitioned the 100% of the proceeds to himself, in blatant disregard for the Decedent's dispositions, and her mother's 45% interests in the Estate

according to the will and Art. 809 of the Spanish Civil Code, duly asserted, sworn and filed with the probate court, according to the Spanish Law and customs.

On September 10, 1996, on an unrelated motion, off the court's calendar, with Petitioner's new counsel absent, MARILYN ORDOVER --sitting for SURROGATE ROTH-- determined that the "matter is ripe for a decision" and the "time has run out for opposition".

No notice was given which was adequate to satisfy the constitutional requirement of notice before judicial action is taken, *Walker v. City of Hutchinson,* 352 U.S. 112 (1956), in fact there was complete absence of notice of any hearing on this issue, violating Petitioner's right to due process.

No evidence was presented before the Court, by anyone having knowledge of any fact to show that the settlement should be approved. By so approving the unfair settlement the Court deprived Petitioner, and the interests she represents, of property without the due process of law required by the Fourteenth Amendment to the United State Constitution, *Thompson v. City of Louisville,* 362 U.S. 199 (1960*); Schware v. Board of Bar Examiners of New Mexico,* 353 U.S. 232 (1957), and Article 1. Sections 2, 6, and 16 of the New York State Constitution.

By "Settle Order" dated October 3, 1996, SURROGATE ROTH authorized the compromise and settlement, the compensation for the petitioner's fees, and the net proceeds to be deposited in an interest bearing escrow account pending the determination of the issue of DECEDENT'S domicile.

The probate court arbitrarily, capriciously and untimely, ignoring the overwhelming facts and documentation in its files, disturbs the long established., and repeatedly asserted Spanish Domicile of the DECEDENT, after eight years and subjects the PETITIONER to a grueling and abusive process in a travesty of justice.

An ex-parte order followed, dated November 7, 1996, Appendix J, A-21, which the decision and order of the APPELLATE DIVISION, FIRST DEPARTMENT, Appendix C, A-3, does not even mention, being, indeed, upon the denial of its vacatur that the entire appeal is based.

Although this copy of the ex-parte order -upon which the stipulation for dismissal with prejudice of the Florida action was based, Appendix I, A-18- is not entered, other copies with various and different stamps of entry would subsequently appea in the probate court's records, duly incorporated for appellate review, and ignored.

On December 20, 1996, for cause and drained of finances and faith in various members and practices of the legal profession, PETITIONER appeared personally in New York, as a last resort.

A first date for a hearing was scheduled on March 4, 1997, to establish the domicile of the DECEDENT and the distribution of the proceeds, followed by subsequent dates on April 03, and May 12, 1997.

By surprise and ambush, GILMAN appeared as witness against his own clients the Spanish ESTATE, the lawful survivors and this PETITIONER, (i) having previously submitted for the Florida court, motion papers asserting the Spanish domicile of the DECEDENT; and (ii) with specific clause in the retainer not to settle the action without the consent of his clients.

**J. ROSENKRANZ'S Stipulation to Dismiss Action, 03.06.97. Order 03.12.97. CIRCUIT COURT, DADE COUNTY, FLORIDA.**

Dated March 6, 1997 --no mention was made by ROSENKRANZ, GILMAN and MARKS, actively attending the hearing of March 4, 1997, at the Surrogate's Court-- an

stipulation signed by LIGGIO and LYNDAYLL M. LAMBERT, of BARWICK, DILLIAN, LAMBERT & ICE, P.A., attorneys for PAN AM, and order for dismissal with prejudice was submitted to the CIRCUIT COURT OF DADE COUNTY, Appendix I, A 18-20.

The order appears signed by Judge DAVID L. TOBIN on March 12, 1997, and recorded on March 17, 1997. A fax transmission report at the top shows date of January 27, 1997, and the name GARFIELD & HECHT, not an identified and recognized party to the action.

> Footnote 1 of the stipulation states:
> 1. Pursuant to the order of the Surrogate's Court of New York County of New York, dated November 7, 1996, and attached hereto, Hans Frank Rosenkranz is authorized and directed to settle and compromise this action on behalf of himself and Marina de Larracoechea Azumendi, to release the Releases as defined below. Additionally, Hans Frank Rosenkranz is authorized and directed to discontinue and withdraw the causes of action for wrongful death and conscious pain and suffering made in the captioned action.

The New York ex-parte order, Appendix J, A 21-25, appears to be missing from the Florida record on appeal. PETITIONER supplemented the record on appeal as per copy submitted by GILMAN on or about March 17, 1997, which shows unsigned order by circuit court judge and order of probate court without stamp of entry.

Dated March 21, 1997, PETITIONER served and submitted in emergency to the circuit court a Petition for Reconsideration of Order of Dismissal and Granting of Stay and Restraining Order, stating Petitioner's opposition and the on going proceedings in New York.

A hearing was scheduled for May 1, 1997. PETITIONER appeared with new, that not independent, counsel LESLIE F. HECKER ("HECKER"), FBN 749869. On

May 30, 1997, HECKER filed a notice of appeal from: (i) Stipulation and Order for Dismissal with Prejudice, dated March 6, 1997; (ii) Order on Plaintiffs' (ROSENKRANZ) Motion to Compel Settlement dated May 2, 1997; (iii) Order Denying Petition for reconsideration; (iv) Order Denying/Granting Plaintiff's/ Defendant's Motion to Stay Enforcement of Settlement, dated May 30, 1997.

HECKER engaged in poor legal representation and dilatory tactics intended to further the settlement and burden Petitioner with problems rather than solutions. For cause HECKER was terminated. On September 19, 1997, PETITIONER filed with the Third District Court of Appeal, "Notice of Dismissal of Attorney and Appearance in Self-Representation", and further moved for an enlargement of time to file the record on appeal and the initial brief, highlighting the unusual circumstances and difficulties of the case. The district court granted one enlargement up to and including December 1, 1997, with no further extensions allowed, and if not timely filed, dismissal of the appeal.

PETITIONER, residing and appearing personally in New York, as well as Florida, as a last resort, was granted TWO MONTHS to get familiar with an eight year case, a remote record, and the Florida law, with no further enlargements.

A nightmare of simultaneities in New York and Florida, "added difficulties", and unruly incomplete, tampered and altered records, in concerted effort ensued by which Petitioner would be harassed and deny any reasonable, proportional and adequate time to best prepare her case in an already most disadvantageous situation at the departing point.

Simultaneously in New York, PETITIONER filed motions to reargue, renew and vacate, Appendix H, A 16-17; to dismiss for lack of subject matter jurisdiction, and in the most forceful opposition to any and all legal fees awards, Appendix

G, A-14; and for disqualification of attorney MARKS, Appendix E, A-8, among others.

Where PETITIONER'S inartfull submissions should have been read liberally to grant her the most forceful arguments, as well established, advantage was taken and sense and sentences manipulated and distorted or left in vague indefinition prompt to confusion and damage control.

## REASONS FOR GRANTING THE WRIT

The multiple violations and abuses committed and the delay and denial of justice stated place in serious questioning the integrity and repute of the American legal and judicial process, placing it in the, public scrutiny, nationally and internationally, given the relevance, high profile and public interest of the case and its various issues.

The eleven year ordeal the Spanish ESTATE and the lawful survivors have been subjected to, and doubly victimized by, in denial of substantive justice, shocks the conscience.

### 1. A COMPROMISE AND SETTLEMENT IMPOSED BY THE SURROGATE'S COURT, NEW YORK COUNTY, FOR THE WRONGFUL DEATH, AND OTHER CAUSES OF ACTION, ON BEHALF OF A DOMICILIARY, RESIDENT AND NATIONAL OF SPAIN, IN AN ACTION LITIGATED IN THE STATE OF FLORIDA HAS NO VALIDITY WHEN DETERMINED IN LACK OF JURISDICTION OR FRAUDULENTLY ACQUIRED.

From the outset, December 1989, the SURROGATE'S COURT OF NEW YORK COUNTY, has exercised, and imposed judicial action and abuse, in want of jurisdiction, and subject matter jurisdiction, or fraudulently acquired in conspiracy of court and. counsel.

At the time MARKS filed the petition for ancillary letters testamentary, December 14, 1989, no property existed in New York. Nor was any intended.

> "ancillary administration in this State, without assets presently here for administration, would be mere 'brutum fulmen'". *Matter of Bobes,* 225 A.D. at 289; 15 Misc 2d 530 (Surr. Ct. N.Y. Cty. 1958).

> **'Brutum Fulmen'.** An empty noise; and empty threat. A judgment void upon its face which is in legal effect no judgement at all, and by which no rights are divested, and from which none can be obtained and neither binds nor bars anyone. *Dollert v. Pratt-Hewitt Oil Corporation.* Tex.Civ. App., 179 S.W.2d 346, 348.

> "Assets must 'arrive' or 'come into' the State in good faith. *Matter of Obregon,* 230 AD 2d 47-54 (1997), *affirmed,* 91 NY2d 591.

The Will had been probated and not contested in Bilbao, Spain. The sole asset the decedent had in New York at the time of her death, a bank account, had been duly and lawfully administered and, in fact, awarded to Respondent ROSENKRANZ.

The ESTATE was unquestionably Spanish, as was the residence, domicile and nationality of the DECEDENT. The Spanish Law, governing said ESTATE was clear and indisputable as to the rights and lawful shares.

> "The granting of Ancillary Letters Testamentary to administer a small bank account of the decedent in New York is not sufficient to confer jurisdiction to The Surrogate's Court to adjudicate with respect to properties of non-domiciliaries of the State of New York. *Obregon,* supra.

> "We now affirm. The Island of Manhattan can no more declare itself the command center over Mexico

and the Cayman Islands with respect to the subject assets in the subject assets in the circumstances of this case today, than the Island of Tobago could pretend to rule the world. in 1808" (see, Buchanan v. Rucker, 9 East 192, 194, 103 Eng. Rep. 546, 547 [K.B. 1808] ["Can the Island of Tobago pass a law to bind the the rights of the whole world? Would the world submit to such an assumed jurisdiction?. Held, No.]). *Obregon.*

"New York is not yet a province of Turkey", *Sultan of Turkey v. Tiryakian,* 213 N.Y. 429-438 (1915),

"or Spain", *King of Spain v. Hullet,* 1 Dowl. & 01. 164.

PETITIONER and RESPONDENT were advised, and intent on filing a wrongful death action in the State of Florida, as, indeed, it was on December 20, 1989.

Further, PETITIONER was advised by counsel, professionals, and experts on Estates and Trusts and aviation disasters , or so she was led to believe, and she **relied** on their advice, guidance and papers.

The COURT OF APPEALS errs in denying PETITIONER an appeal by either method and ignores the overwhelming record where Petitioner's arguments on law and the intervening factors might have been inartful.

In so doing, the abuses and denials in civil conspiracy to deprive of due process, substantive rights and property is affirmed. PETOTIONER, and the interests she represents, have been systematically denied these guarantees secured in the Constitutions of the United Sates and the States of Florida and New York and the Universal Declaration of Human Rights, and timely reserved and raised.

This simplification and omission of the issues raised further burdening this PETITIONER pro-se litigant in a grueling effort never sought or desired.

Counsel and RESPONDENT retract and contradict themselves in inconsistent positions on the central and decisive issue of the Spanish domicile of the DECEDENT, in the files of the court, are coordinated and concerted by the attorneys for both plaintiffs and defendants, PETITIONER and RESPONDENT.

Said retractions are "deliberate misrepresentations", *The Florida Bar v. Hmielewski*, 702 So.2d 218, allowing counsel to "progress with inconsistent position", *Godwin v. Bogart*, 675 So. 2d 606, intended to, and manifestly departing from, the essential requirements of law, to railroad the action into a concerted effort to settle.

The COURT OF APPEALS and the APPELLATE DIVISION fail to redress the abuse of discretion and process of the SURROGATE'S COURT, that, first, allows the attorneys to "progress with inconsistent positions" and "deliberate misrepresentations", second, allows the wrongful death action to be converted in an application to compromise and settle in the SURROGATE'S COURT, NEW YORK COUNTY.

The circuit court in Florida, and the probate court in New York determined the matter by ex-parte order, having both courts pre-decided on the compromise and settlement, regardless of the facts, merits and rights.

Petitioner, recognized and with legal standing from the outset, in consistent and coherent opposition to the unfair settlement and the surreptitious methods used to secure it, sustaining the initial demand for jury trial in the chosen forum, was ignored and kept uninformed, being presented with decisions and orders, in concerted effort and collusion as a 'fait accompli'.

In so doing inflicting "deprivation of protectable property interest by one acting under color of law", *Parrat v. Taylor,* 451 US 527, 535, and "with private actors to interfer with civil rights".

The hallmark of property "is an individual entitlement grounded in state law, which cannot be removed except 'for cause'" (*Logan v Zimmerman Brush Co.,* 455 US 4222, 430; *Parratt v. Taylor,* 451 US 527, 535). *Town of Orangetown v. Magee,* 99 NY2d 41-

Wrongful Death Act. The Right of Action. Florida Statutes. § 768.19. "A statute cannot dissolve either and inchoate or vested right which is of constitutional magnitude", *Robbins v. Robbins,* 360 So.2d 10, Fla.App. 1978.

The District Court affirms the denial of due process of the Fourteenth Amendment and the equal protection of the law, the multiple violations, legal trickery and procedural non-compliance vitiating the ten year action.

## CONCLUSION

The petition for a writ of certiorari should be granted to establish the limits to, and as a deterrent of, extreme. illegal and prolonged abuses to impose an undesired and unconscionable course of justice.

Respectfully Submitted

Dated: January 24, 2000
New York, New York

Redone: April 10, 2000

Marina de Larracoechea Azumendi
307 East 44th Street; 1120
New York, New York 10017
(212) 697-0189

Labayru No. 1
48012 Bilbao
Spain
34-94-421.33.85

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**APPENDIX A -- ORDER.**
**COURT OF APPEALS STATE OF NEW YORK.**
**DATED AND ENTERED THE 26th of OCTOBER, 1999**

**At a session of the Court, hold at Court of Appeals Hall in the City of Albany on the twenty-sixth day of October 1999**

PRESENT, HON. JUDITH S. KAY,
Chief Judge, presiding.

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1-10 Mo. No. 1094
In the Matter of Maria Nieves
De Larracoechea Azumendi,
Deceased.
Marina de Larracoechea Azumendi,
Appellant,
Hans Frank Rosenkranz,
Respondent,

---

A motion for leave to appeal to the Court of Appeals, in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that said motion be and the same hereby is denied.

The embossed seal
of the Court of Appeals
State of New York

s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

**APPENDIX B -- ORDER.**
**COURT OF APPEALS. STATE OF NEW YORK**
**DATED AND ENTERED THE 06th of JULY, 1999**

**At a session of the Court, held at Court of Appeals Hall in the City of Albany on the sixth day of July 1999**

**PRESENT,** HON. JUDITH S. KAY,
Chief Judge, presiding.

---

Mo. No. 605
In the Matter of Maria Nieves
de Larracoechea Azumendi,
Deceased.
Marina De Larracoechea Azumendi,
Appellant,
Hans Frank Rosenkranz,
Respondent.

---

A motion having heretofore been made herein upon the part of the respondent to dismiss the appeal taken by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had it is

ORDERED, that the said motion be and the same hereby is granted and appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved.

The Embossed Seal of
The Court of Appeals,
State of New York

s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

## APPENDIX C -- DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT DATED AND ENTERED MARCH 11, 1999.

Ellerin, P.J., Rubin, Mazzarelli, Saxe, JJ.

482-
483-
483A-
483B-
483C- In re Application of Hans Frank Rosenkranz, etc.,

Maria Nieves De Larracoechea Azumendi,
Deceased,

For Leave to Compromise and Settle, etc.

---

Marina De Larracoechea Azumendi,
Appellant,

Pro Se

Hans Frank Rosenkranz,
Respondent.

John B. Cartafalsa

Decree, Surrogate's Court, New York County (Renee R. Roth, S.), entered on or about March 27, 1998, which, *inter alia,* adjudged that the decedent was a domiciliary of the State of New York at the time of her death and orders, same court and Surrogate, entered January 7, 1998, August 21, 1997, June 16, 1997 and March 27, 1998, which, *inter alia,* denied motions to dismiss the proceeding for lack of jurisdiction and to renew a prior order authorizing appellant's co-fiduciary to compromise the decedent's wrongful death action, unanimously affirmed, without costs.

Surrogate's Court obtained jurisdiction when the petition for ancillary letters, which was signed by appellant

ancillary co-executor was filed with the court, and letters were issued to appellant and the decedent's husband in 1989.

We note that appellant never challenged jurisdiction until it became apparent that the distribution of the wrongful death proceeds would not be favorable to her. The decedent was properly adjudged a New York domiciliary at the time of her death upon a record showing, among other things, that she had continued to file income tax returns in the United States up until the year before her death, and that failed to establish by clear and convincing evidence that she had abandoned her New York domicile for Spain.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT.

ENTERED: MARCH 11, 1999

s/ Catherine O'Hagan Wolfe
CLERK

**APPENDIX D -- DECREE.**
**SURROGATE'S COURT, NEW YORK COUNTY.**

In the Surrogate's Court of the
State of New York, held in and for
the County of New York, at the
Courthouse, 31 Chambers Street,
New York, New York,
on the 26th day of March, 1998.

PRESENT:
Hon. Renee R. Roth, Surrogate.

Stamp of Entry
Surrogate's Court
New York County
98 MAR 27 PM 3:48

----------X

In the Matter of the Application of
Hans Frank Rosenkranz, as Co-Executor of
the Estate of

File No. 5514/89

MARIA NIEVES DE LARRACO[E]CHEA AZUMENDI

DECREE

Deceased.

For Leave to Compromise and Settle the Cause
of Action for the Wrongful Death and Conscious
Pain and Suffering and for Judicial Settlement of
the Account with Respect to the Proceeds.

----------X

The petitioner HANS FRANK ROSENKRANZ, as ancillary co-executor of the Estate of Maria Nieves DeLarraco[e]chea Azumendi, having moved to settle his account of the proceeds of an action for the wrongful death of his wife Maria Nieves DeLarraco[e]chea Azumendi, and to distribute the proceeds of settlement in accordance with the laws of the State of New York, and the Court on November 7,

1996 having authorized petitioner to compromise and settle for the sum of $1,500,000-00, the cause of action against PAN AMERICAN WORLD AIRWAYS, INC., PAN AM WORLD SERVICES, INC., ALERT MANAGEMENT SYSTEMS, INC., UNITED AVIATION UNDERWRITERS, INC., and THE UNITED STATES AIRCRAFT INSURANCE GROUP, for the wrongful death of the decedent; and directed the petitioner.

in the amount of $1,116,821.40 (hand written) to deposit the net proceeds into an interest bearing escrow account pending determination of the issue of the decedent's domicile and the distribution of the net proceeds of the recovery,

And said issues having been tried before a court attorney referee on March 4, 1997, April 3, 1997 and May 12, 1997, and Marina DeLarracoechea Azumendi as ancillary co-executor having appeared individually and as attorney-in-fact for Marina Azumendi Valle, Maria Theresa Azumendi Valle, Anne DeLarracoechea Gonzalez, Maria Jose Gonzalez Iribarren and Maria En[e]dina Flores Garcia,

And ancillary co-executor Marina DeLarracoechea Azumendi having previously appeared by attorneys Greenfield, Stein & Senior, Esqs. and said attorneys having been given permission to withdraw, and thereafter Marina DeLarracoechea Azumendi having appeared by attorneys Feffer & Roskoff, Esqs. and. having discharged said attorneys and since December 1996 having appeared pro se and having been heard in opposition to the proceedings had herein, and based upon the testimony of the witnesses and exhibits produced by the respective parties at the trial of the issues, and the court having rendered a decision dated February 13, 1998, determining that decedent's sister failed to meet her burden of proving that decedent changed her domicile from New York to Madrid and that the distribution of the net proceeds of the wrongful death recovery would thus be distributed in accordance with the law of the State of New York, to wit, EPTL 5-4.4, it is hereby

ORDERED, ADJUDGED and DECREED, that decedent Maria-Nieves DeLarracoechea Azumendi was a domiciliary of the State of 'New York at the time of her death; and it is further

ORDERED, ADJUDGED and DECREED, that Lionel Alan Marks, Esq., as escrowee of the escrow account established pursuant to this court's order dated November 7, 1996, is directed to retain fifty thousand dollars ($50,000) in said escrow account pending a hearing and determination on Marina Azumendi's right to commissions in connection with the wrongful death recovery, at which time the amount of commissions to which Ms. Azumendi is entitled, if any, shall be entered at the foot of this decree; and it is further

ORDERED, ADJUDGED and DECREED, that Lionel Marks, as escrowee, is directed to distribute $5,000 to Hans Frank Rosenkranz for reimbursement of decedent's funeral expenses and Surrogate's Court filing fees and to distribute the balance of the funds in said escrow account in excess of the retained $50,000 as follows: fifteen percent (15%) to decedent's mother Marina Azumendi Valle and eighty-five percent (85%) to decedent's husband Hans Frank Rosenkranz; and it is further

ORDERED, ADJUDGED and DECREED, that upon the making of the aforementioned distributions, Hans Frank Rosenkranz and Marina Azumendi, as ancillary co-executors of the estate of MariaNieves DeLarracoechea Azumendi, be and hereby are discharged from any and all further liability as to all matters and things embraced in this decree and in the account heretofore filed; and it is further

ORDERED ADJUDGED and DECREED, that the account of Hans Frank Rosenrkanz as ancillary co-executor is hereby settled.

s/ RRR
Surrogate

## APPENDIX E -- DECISION AND ORDER. SURROGATE'S COURT, NEW YORK COUNTY. DATED AND ENTERED MARCH 27, 1998

SURROGATE'S COURT : NEW YORK COUNTY

----------x

In the Matter of the Application of
Hans Frank Rosenkranz, as Co-Executor
of the Estate of

File No. 5514/89

MARIA-NIEVES DE LARRACOECHEA AZUMENDI,

Stamp of Entry

Deceased,

Surrogate's Court
New York
County
98MAR27
PM 3:48

For Leave to Compromise and Settle the Cause of Action for the Wrongful Death and Conscious Pain and Suffering and for Judicial Settlement of the Account with Respect to the Proceeds.

----------x

R 0 T H , S.

This motion in the estate of Maria-Nieves De Larracoechea Azumendi to, *inter alia,* remove decedent's husband as ancillary co-executor and disqualify his attorney is the latest of several applications by decedent's sister, Marina Azumendi, the other co-fiduciary of decedent's estate (see, e.g., *Matter of Azumendi,* NYLJ, June 19, 1997, at 29, col. 5 [denial of motions to renew and reargue order of November 7, 1996 and to vacate order of November 7, 1996] [appeal pending]; *Matter of Azumendi,* NYLJ, Aug. 26, 1997, at 23, col. 4 [denial of motion to dismiss and. nullify proceeding for lack of jurisdiction] [appeal pending]; *Matter of Azumendi,* NYLJ, Jan. 12, 1998, at 29, col. 1 [denial of motions to resettle order of August 219 1997 and stay proceedings pending appeal and for enlargement of time to settle transcript] [appeal filed]; *Matter of Azumendi,* NYLJ, Feb. 19, 1998, at 29, col. 3 [denial of objection to distribution of proceeds of wrongful death action];

*Matter of Azumendi,* __AD2d__ March 25, 1997, No. M-924 [denial of motion for leave to appeal from order of November 7, 1996]; *Matter of Azumendi,* __AD2d__, Feb. 19, 1998, No. M-8193 [motion to disqualify petitioner's attorney, enlarge time to perfect appeal, consolidate appeals and hear appeals on original record granted only to the extent enlarging time to perfect appeal to the June 1998 term]).

Ms. Azumendi seeks removal of her co-fiduciary, decedent's husband Hans Frank Rosenkranz, because he has remarried and "his priorities have changed drastically and no longer have at heart the best interests and the procurement of justice for the preventable loss of Maria Nieves' precious life. The petitioner's new life situation and interests is inflicting irreparable harm to the Estate of Maria Nieves de Larracoechea Azumendi and extreme burden to the lawful survivors." Mrs. Azumendi's allegations are not a valid basis for removal (SCPA §711) and her application is accordingly denied.

Ms. Azumendi also moves to disqualify Lionel Marks, Esq., the attorney who represents her co-fiduciary, on the ground that such representation violates New York's Rules of Professional Responsibility relating to conflicts of interests (NY Code of Prof. Resp. § 1200.27). There is no question 'that Mr. Marks represented- both fiduciaries when they filed their petition for ancillary letters testamentary and that after Ms. Azumendi discharged Mr. Marks and retained independent counsel Mr. Marks continued to represent Mr. Rosenkranz in connection with the latter's effort to settle the wrongful death action and account for its proceeds.

It is well settled that an attorney who has represented two fiduciaries cannot subsequently represent one in a proceeding against the other involving the same estate (*Matter of Kelly,* 23 NY2d 368; *Matter of Holtzman,* NYLJ, August 4, 1997 at 28, col. 6; *Matter of Winston,* NYLJ October 29, 1990, at 31, col.2, affd, 174 AD2d 748). Accordingly, Ms. Azumendi's motion is granted and Mr. Marks is disqualified from representing Mr. Rosenkranz in connection with this

estate. Based upon this ruling, Mr. Marks' cross-motion for sanctions is denied.

Ms. Azumendi's request that the court disregard an ex-parte letter allegedly sent by Mr. Marks to an attorney in the law Department is denied as moot since such communications, which are not pleadings, are not read by the court in any event.

It is observed that the accounting decree submitted by Mr. Rosenkranz does not contain any provision for payment of commissions to either difuciary. Mr. Rosenkranz contends that both he and his sister-in-law agreed to waive their compensation. However, Mrs. Azumendi denies any waiver on her part and no formal waivers have been filed with the court. The statute governing allowance of commissions provides in relevant part that where there are multiple fiduciaries the court may apportion commissions among them according to the respective services rendered by each (SCPA § 2307[1]). Accordingly, a portion of the settlement proceeds equal to the amount of Mrs. Azumendi's potential award of commissions shall be retained in escrow pending a hearing on her right to commissions and the remaining funds shall be distributed in accordance with the decision directing distribution of the wrongful death proceeds (*Matter of Azumendi,* NYLJ, Feb. 19, 1998, at 29, col. 3). The amount of any commissions awarded as a result of such hearing shall be entered at the foot of the accounting decree.

Finally, Ms. Azumendi's request to dismiss the notice of settlement of the decree served upon her by decedent's husband is denied. The notice of settlement that appears on the attorney's back is in proper form and was properly served. Decedent's husband complied with the requirement of 22 NYCRR Part 207.37(a) by submitting the decree within 60 days after it was signed and filed with the clerk of the court. Moreover, Ms. Azumendi's allegation that she did not have a copy of the February 13, 1998 decision and was thus unable to file a counter-decree in a timely manner is contradicted by her attachment of a copy of such decision to her March 2, 1998 affidavit.

It is noted that this decision, together with the decree directing distribution of the wrongful death proceeds (which

has been signed), determines all outstanding applications relating to this estate other than the issue of Mrs. Azumendi's commissions. Her various pending applications on unrelated matters are thus rendered moot and further submissions by Ms. Azumendi on matters unrelated to her commissions will not be accepted for filing.

The clerk of the court is directed to mail a copy of this decision, which constitutes the order of the court, to Ms. Azumendi.

s/ RRR
Surrogate

Dated: March 27, 1998

**APPENDIX F -- DECISION-ORDER.**
**SURROGATE'S COURT, NEW YORK COUNTY.**
**DATED AND ENTERED JANUARY 07, 1998**

Stamp of Entry
Surrogate's Court
New York County
98 JAN -7 PM 3:29

SURROGATE'S COURT : NEW YORK COUNTY

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In the Matter of the Application of
Hans Frank Rosenkranz, as Co-Executor
of the Estate of

MARIA NIEVES DE LARRACOECHEA AZUMENDI,

File No. 5514/89

Deceased,

For Leave to Compromise and Settle the
Cause of Action for the Wrongful Death
and Conscious Pain and Suffering and
for Judicial Settlement of the Account
with Respect to the Proceeds.

----------x

R 0 T H , S.

Pending are two motions by the co-executrix of the estate of Maria Nieves De Larracoechea Azumendi. The first seeks resettlement of an order dated August 21, 1997 and a stay of all proceedings pending an appeal. The second requests an enlargement of time to prepare, settle and serve transcripts of hearings held in this Court.

Although movant accurately points out that CPLR 2219(a) provides that an order "shall recite the papers used on the motion", it is well settled that failure to do so is a mere irregularity which does not impede the right to appeal, (see, *Singer v. Board of Education of the City of New York* (97 AD2d 507). Thus, there is no justification for a resettlement or

a stay to permit movant to appeal this Court's order. This motion is accordingly denied. As to the second motion, there is nothing pending in this court which requires an enlargement of time. The transcripts were not any part of the order which movant wishes to appeal (CPLR 5526; *Matter of Brady*, 155 Misc. 242, *affd.* 246 AD 619). Accordingly, this motion is also denied.

This decision constitutes the order of the Court.

s/ RRR
Surrogate

Dated: January 7, 1998

**APPENDIX G -- DECISION-ORDER.**
**SURROGATE'S COURT, NEW YORK COUNTY.**
**DATED AND ENTERED AUGUST 21, 1997**

Stamp of Entry
Surrogate's Court
New York County
97 AUG 21 PM 3:43

SURROGATE'S COURT : NEW YORK COUNTY

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In the Matter of the Application of
Hans Frank Rosenkranz, as Co-Executor
of the Estate of

MARIA NIEVES DE LARRACOECHEA AZUMENDI,

File No. 5514/89

Deceased,

For Leave to Compromise and Settle the
Cause of Action for the Wrongful Death
and Conscious Pain and Suffering and for
Judicial Settlement of the Account with
Respect to the Proceeds.

----------x

R O T H , S.

Pending are two applications which relate to the settlement of a wrongful death action in the estate of Maria-Nieves DeLarracoechea Azumendi. Decedent died in the Pan Am Flight 103 disaster. By prior decision decedent's spouse was authorized to settle the wrongful death action (*Matter of Azumendi,* NYLJ, at 25, col 2) and motion by his co-administratrix, decedent's sister, for leave to reargue that order, was denied *Matter of Azumendi,* NYLJ, June 19, 1997 at 29, col. 5).

The co-administratrix (appearing pro se) continues to oppose the settlement, this time by seeking dismissal of the proceeding on the ground of lack of jurisdiction. This court

clearly had jurisdiction to issue letters of administration and to authorize the settlement. The only open issue concerns the distribution of the proceeds of the settlement. Accordingly, the motion is denied. Further motions by the co-administratrix for the same relief shall result in the imposition of sanctions.

The co-administratrix' former attorneys seek to have their compensation fixed from estate assets. They were retained after the co-administratrix discharged prior counsel because he recommended that she accept the proposed settlement. Thus, petitioner's services, for which they seek $12,272.50, relate solely to their client's opposition to the settlement which did not benefit the estate. Accordingly, counsel's application is denied, without prejudice to their seeking payment from the co-administratrix personally.

This decision constitutes the order of the court.

s/ RRR
SURROGATE

DATED: August 21st, 1997

**APPENDIX H -- DECISION-ORDER.**
**SURROGATE'S COURT, NEW YORK COUNTY.**
**DATED JUNE 13, 1997, ENTERED JUNE 169 1997**
402

Stamp of Entry
Surrogate's Court
New York County
97 JUN 16 Pm 1:26

SURROGATE'S COURT : NEV YORK COUNTY

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In the Matter of the Application of
Hans Frank Rosenkranz, as Co-Executor
of the Estate of

File No. 5514/89

MARIA NIEVES DE LARRACOECHEA AZUMENDI,

Deceased,

For Leave to Compromise and Settle the
Cause of Action for the Wrongful Death
and Conscious Pain and Suffering and
for Judicial Settlement of the Account
with Respect to the Proceeds.

----------x

R 0 T H , S.

This motion by one of the fiduciaries of the estate of Maria Nieves De Larracoechea Azumendi seeks reargument and renewal of an order entered November 18, 1996 compromising a cause of action for decedent's personal injury and wrongful death. Decedent was a flight attendant on Pan Am-Flight 103 which went down in Lockerbie, Scotland.

Movant, decedent's sister, was granted ancillary letters of administration to serve together with decedent's husband, who is her sole distributee. Although in her answer to the petition to compromise movant took issue with the distribution of the assets she did not dispute the proposed settlement of

$1,500,000. Movant maintained that the proceeds had to be distributed according to the law of Spain, where decedent was allegedly domiciled. It is noted that under Spanish law movant has no interest in such assets; decedent's husband would receive two-thirds and her mother one-third. This Court's prior order, which authorized the co-executor to settle for $1,500,000, directed that the proceeds be placed in an escrow account pending a hearing on the issue of decedent's domicile.

It is well settled that a motion for reargument is addressed to the discretion of the Court and is designed to afford the movant the opportunity to establish that the Court overlooked or misapprehended some relevant fact or misapplied some controlling principle of law (*Pro Brokerage, Inc. v. Home ins. Co.*, 99 AD2d 971; *Foley v. Riche*, 68 Ad2d 558). For renewal, movant must establish material facts which, although extant at the time of the petition, were not then known to the movant and consequently were not placed before the Court (*Matter of Beiny*, 132 AD2d 190, *app. dism.* 71 NY2d 994). Here, movant fails to allege any facts which were not known to her at the time the petition was considered or that the Court overlooked any facts now alleged. Accordingly, the motion is denied.

Finally, the motion to vacate the decree on the ground that it was not signed within 60 days is denied. The order, dated November 7, 1996, was signed one month after the decision dated October 3, 1996.

This decision constitutes the order of the Court.

s/ RRR
SURROGATE

Dated: June 13th, 1997

**APPENDIX I -- STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE OF THE CIRCUIT COURT FOR DADE COUNTY, RECORDED MARCH 17, 1997.**

JAN.27.1997 5:25 GARFIELD & HECHT N0.447 P.2
(Fax Transmission Report)

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY,
FLORIDA.

CIVIL DIVISION
CASE NO. 89-56581 CA 13.

HANS FRANK ROSENKRANZ and MARINA DE LARRACOECHEA AZUMENDI,
Personal Representatives of the Estate of MARIA-NIEVES DE LARRACOECHEA AZUMENDI,
deceased, on behalf of said Estate and the lawful survivors of the deceased,

Plaintiffs,

vs.

PAN AMERICAN WORLD AIRWAYS, INC. a foreign corporation, and PAN AMERICAN WORLD SERVICES, INC. and ALERT MANAGEMENT SYSTEMS, INC. Florida corporations,

Defendants.

FINAL ORDER AS TO ALL PARTIES

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S R S DISPOSITION NUMBER 12
02 Disposed by JURY TRIAL
03 Disposed by NON JURY TRIAL
12 DISPOSED BY JUDCE EX PARTE

OFF REC BK 17562PG1929

Plaintiff, HANS FRANK ROSENKRANZ, Personal Representative of the Estate of MARIA NIEVES DE LARRACOECHEA AZUMENDI, deceased, etc., (1) and the Defendants, PAN AMERICAN WORLD AIRWAYS, INC., a foreign corporation, PAN AMERICAN WORLD SERVICES, INC. and ALERT MANAGEMENT SYSTEMS, INC., Florida corporations, having amicably resolved their dispute, hereby stipulate and agree to dismiss the Plaintiffs' claims against PAN AMERICAN WORLD AIRWAYS INC., PAN AMERICAN WORLD SERVICES, INC. and ALERT MANAGEMENT SYSTEMS, INC. with prejudice, each party to bear their own costs and attorneys fees.

Dated this 6th day of March, 1997.

LIGGIO & LUCKMAN
213 Southern Boulevard
West Palm Beach, FL 33405
(407) 833-6604

By: s/ Jeffrey Liggio
JEFFREY M. LIGGIO
Florida Bar No. 357741
Attorney for Plaintiffs

BARWICK, DILLIAN,
LAMBERT & ICE, P.A.
Suite 555,
999 Brickell Avenue
Miami, FL 33131
(305) 358-6001

By:s/ Lyndall Lambert
LYNDALL M. LAMBERT
Florida Bar No.309013
Attorney for Defendants

(1) Pursuant to the order of the Surrogate's Court of New York, County, of New York, dated November 7, 1996, and attached hereto, Hans Frank Rosenkranz is authorized and directed to settle and compromise this action on behalf of himself and Marina De Larracoechea Azumendi, to release the release as defined below. Additionally, Hans Frank Rosenkranz is authorized and directed to discontinue and withdraw the causes of action for wrongful death and conscious pain and suffering made in the captioned action.

OFF REC BK 17562PG1930

**ORDER OF DISMISSAL**

THIS MATTER came before this Court upon the foregoing Stipulation For Dismissal, and the Court having the benefit of agreement of counsel and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Stipulation is approved and the Plaintiffs' claims against PAN AMERICAN WORLD AIRWAYS, INC.,, PAN AMERICAN WORLD SERVICES, INC. and ALERT MANAGEMENT SYSTEMS, INC. are hereby dismissed with prejudice, each party to bear their own costs and attorneys fees.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 12 day of March, 1996.

s/ David L. Tobin
CIRCUIT JUDGE

COPIES FURNUSHIED TO:
Lyndall M. Lambert, Esq.
Matthew C. Ferguson, Esq.
Jeffrey M. Liggio, Esq.
Nicholas Gilman, Esq.

C: MCF LOCKERBIE ROSEN STIP

OFF REC BK 17562PG1931

## APPENDIX J -- ORDER. SURROGATE'S COURT, NEW YORK COUNTY. DATED, NOVEMBER 7, 1996. NOT ENTERED.

In the Surrogate's Court of the State of New York, held in and for the County of New York, at the Courthouse, 31 Chambers Street, New York, New York, on the 7th day of November, 1996

PRESENT

Hon. RENEE R. ROTH, Surrogate,

----------x

In the Matter of the Application of
Hans Frank Rosenkranz, as Co-Executor of
the Estate of

File No. 5514/89

MARIA NIEVES DE LARRACOECHEA AZUMENDI,

ORDER

Deceased,

For Leave to Compromise and Settle the
Cause of Action for the Wrongful Death
and Conscious Pain and Suffering and
for Judicial Settlement of the Account
with Respect to the Proceeds

----------x

Upon the petition of HANS FRANK ROSENKRANZ as Co-Executor of the Estate of MARIA NIEVES DE LARRACO[E]CHEA AZUMENDI, deceased, duly verified the 24th day of April, 1996; and his accounting verified May 8. 1996, the affidavit of NICHOLAS GILMAN Esq. sworn to the 24nd day of April, 1996, the affidavit of LIONEL ALAN MARKS, Esq., sworn to the 8th day of May 1996, the supplemental affidavit of LIONEL ALAN MARKS, sworn to the 15th day of May, 1996, the waiver and consent of the

COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, to compromise and settle for the sum of $1,500,000-00 the cause of action against PAN AMERICAN WORLD AIRWAYS, INC., PAN AM WORLD SERVICES, INC., ALERT MANAGEMENT SYSTEMS, INC., UNITED AVIATION UNDERWRITERS, INC., and THE UNITED STATES AIRCRAFT INSURANCE GROUP, for the wrongful death of the decedent Maria Nieves DeLarraco[e]chea Azumendi,

And to discontinue the cause of action for conscious pain and suffering and to discharge and release the defendants and their insurance companies from all suits and claims upon the payment of the said $1,500,000-00 in settlement of the cause of action herein,

And that the entire recovery of said action should be allocated to the cause of action for the decedent's wrongful death, and to permit said compromise, dispense with the filing of a bond, judicially settle the account, and to pay to GILMAN & PANGIA, Esqs, and LIGGIO & LUCKMAN, Esqs., and LIONEL ALAN MARKS, Esq., their fees and disbursements for services rendered,

And the respondent MARINA DE LARRACOECHEA AZUMENDI, having filed an Answer to the petition and Objection to the Account, verified on the 31st day of July, 1996, and having filed an Amended Answer to the petition and Amended Objections to the Account, verified the 20th day of August 1996, in opposition to the petition and account,

And the matter having regularly come on to be heard before the Court and the Court having duly deliberated,

And the decision of the Surrogate dated October 3, 1996 having been filed herein, it is hereby

ORDERED, that the petitioner's application for leave to compromise and settle the cause of action for wrongful death and to allocate the entire amount of the proceeds to the cause of action for wrongful death and to grant leave to discontinue the cause of action for conscious pain and suffering is granted; and it is further

ORDERED, that the petitioner HANS FRANK ROSENKRANZ as Co-Executor of the decedent's estate is

authorized to settle and discontinue the claims and causes of action for conscious pain and suffering and wrongful death against the defendants PAN AMERICAN WORLD AIRWAYS, INC., PAN AM WORLD SERVICES, INC., ALERT MANAGEMENT SYSTEMS, INC., UNITED AVIATION UNDERWRITERS, INC., and THE UNITED STATES AIRCRAFT INSURANCE GROUP, and petitioner is authorized to deliver general releases and discontinuance and any papers and documents that may be required to effectuate a settlement and discontinuance and withdrawal of said claims and causes of action for conscious pain and suffering and wrongful death and it is further

ORDERED, that the entire settlement sum of $1,500,000.00 is allocated to the cause of action for wrongful death, and the cause of action for conscious pain and suffering is discontinued with prejudice and without interest, costs or disbursements; and it is further

ORDERED, that the defendant PAN AMERICAN WORLD AIRWAYS INC., PAN AM WORLD SERVICES, INC., ALERT MANAGEMENT SYSTEMS, INC., UNITED AVIATION UNDERWRITERS, INC., and THE UNITED STATES AIRCRAFT INSURANCE GROUP, are authorized and permitted to pay the settlement sum of $1,500,000.00 as follows:

To: GILMAN & PANGIA, Esqs.
as and for their fee for services
as attorney for the Petitioner in
the action for wrongful
death of the decedent..... $ 346,247.60

To: GILMAN & PANGIA, Esqs.
as and for reimbursement
of disbursements incurred
in the prosecution of the
action for wrongful death
of the decedent..... $ 17,818,11

To: LIGGIO & LUCKMAN, Esqs.
as and for reimbursement
of disbursements incurred

| | | |
|---|---|---|
| in the prosecution of the action for wrongful death of the decedent ..... | $ | 1,395.57 |
| To: LIONEL ALAN MARKS, Esq. as and for his fee as attorney for the Petitioner for services through May 6, 1996 ..... | $ | 17,272.50 |
| To: LIONEL ALAN MARKS, Esq. as and for reimbursement of disbursements as attorney for the Petitioner incurred through May 6, 1996..... | $ | 444.95 |
| To: Estate of MARIA NIEVES DE LARRACO[E]CHEA AZUMENDI the balance of the proceeds of settlement..... | $ | 1,116,821.40 |

And, it is further

ORDERED, that the balance of the proceeds of settlement of $1,116,821.40 paid to the Estate of Maria Nieves De Larracoechea Azumendi, shall be deposited in an interest bearing escrow account pending the determination of the issue of the decedent's domicile subject to the further order of this Court, and it is further

ORDERED, that upon the defendants, PAN AMERICAN WORLD AIRWAYS, INC., PAN AM WORLD SERVICES, INC., ALERT MANAGEMENT SYSTEMS, INC., UNITED AVIATION UNDERWRITERS, INC., and THE UNITED STATES AIRCRAFT INSURANCE GROUP, making payments as aforesaid, the Co-Executor HANS FRANK ROSENKRANZ, be and hereby is discharged from any and all further liability as to all matters and things determined by this order; and it is further

ORDERED, that the giving of a bond be dispensed with, and it is further

ORDERED, that the account of HANS FRANK ROSENKRANZ, as Co-Executor of the Estate of Maria Nieves de Larracoechea Azumendi., is hereby judicially settled.

s/ RRR
SURROGATE (crossed out)

s/ SURROGATE

**APPENDIX K**
**ANCILLARY LETTERS TESTAMENTARY**
**SURROGATE'S COURT NEW YORK COUNTY.**
**DATED THE 26th of DECEMBER, 1989**

(illegible) – 431549 Form M1 2397

**THE PEOPLE OF THE STATE OF NEW YORK,**

To all to whom these presents shall come or may concern, 5514/89

SEND GREETING:

**KNOW YE,** That we, having inspected the records of our Surrogate's Court in and. for the County of New York, do find that on the 20th day of December in the year one thousand nine hundred and 89 by said Court, ANCILLARY Letters Testamentary on the estate of

MARIA-NIEVES DE LARRACOECHEA AZUMENDI late of the County of New York, deceased, were granted unto

HANS FRANK ROSENKRANZ AND MARINA DE LARRACOECHEA AZUMENDI the Execut ORS named in the last Will and Testament of said deceased and that it does not appear by said Records that said Letters have been revoked

In Testimony Whereof, we have caused the Seal of the Surrogate's Court of the County of New York to be herunto affixed.

Witness, Honorable MARIE M. LAMBERT Surrogate of our said County, in the City of New York, the 26th day of December in the year of our Lord one thousand nine hundred and 89

The Seal of
The Surrogate's Court
New York County

s/ Robert M. Reaves
Clerk of the Surrogate's Court

**APPENDIX L -- DECREE GRANTING ANCILLARY LETTERS TESTAMENTARY SURROGATE'S COURT, NEW YORK COUNTY. DATED DECEMBER 15, 1989 ENTERED DECEMBER 19, 1989**

Present:

Honorable

---x

In the Matter of the Application for Ancillary Letters Testamentary **Decree** on the Last Will and Testament of

Maria-Nieves de Larracoechea Azumendi

**Granting Ancillary Letters Testamentary**

Late of Bilbao, Viscaya
State of Spain

55141989

**Deceased**

---x

Stamp of Entry
Surrogate's Court
New York County
89 DEC, 19 PM 1:10
Record Room
Filed

**A copy of the record of the will of** Maria-Nieves de Larracoechea Azumendi **deceased, late of the City** of Bilbao, Vizcaya **State of** Spain**, and the judgment, decree or order of the** General Archive of Protocols **Court of** Bilbao, Viscaya, Spain**, within said state, entered the** 12 **day of** June, **1989, duly** establishing said will, the Notarial Deed of Approval and Official Registration of the Division of the Estate of Maria-Nieves de Larracoechea Azumendi executed before a Notary Public in Bilbao, Spain, Mr. Jose Maria Arriola Arana on June 12, 1989 under Serial number 2023 in his Protocol

**authenticated as prescribed by statute, having been filed in this court on the** 12th **day of** December, 1989 **(together with an instrument duly executed by** all legatees by attorney-in-fact Marina de Larracoechea Azumendi **authorizing** Hans Frank Rosenkranz and Marina de Larracoechea Azumendi **to receive ancillary letters testamentary upon the estate.of said deceased)** Maria-Nieves de Larracoechea Azumendi **having therewith presented to and filed in this court their verified petition praying for a decree awarding to them ancillary letters testamentary on said will, and the Surrogate having ascertained to this satisfaction that there are no creditors or persons claiming to be creditors of the said decedent residing within the State of -New York**

**Now, on motion of** Lionel Alan Marks Esq. **attorney for said** Hans Frank Rosenkranz and Marina de Larracoechea Azumendi

**It is Ordered and Decreed that said will and letters be recorded and that ancillary letters testamentary on said will of** Maria-Nieves de Larracoechea Azumendi **deceased, be issued to the said** Hans Frank Rosenkranz and Marina.de Larracoechea Azumendi **upon their taking and subscribing the statutory oath or affirmation and qualifying as prescribed by law,**

**It is Further Ordered and Decreed that none of the property of the decedent shall be removed from this State until sufficient evidence has been given to the State Tax Commission to enable it to ascertain the estate tax herein.**

s/ Renee R. Roth
Surrogate